FILE COPY

Office-Supreme Court, U.S.
FILED
MAY 20 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 853

MICHAEL P. GRACE, II, individually and as a Trustee under the Last Will and Testament of JANET GRACE,

Petitioner,

against

DEEPDALE, INC., REAL PROPERTY OWNERS, INC., GRACE NATIONAL BANK OF NEW YORK, GRACE PROPERTIES, INC., in Liquidation and ALBERT JORGENSEN, COMMITTEE OF JANET MAUREEN GRACE, by Grace National Bank of New York, and Michael P. Grace, II, its members, CHARLES MacDONALD GRACE, individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, JOSEPH P. GRACE, JR., individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, and JOHN P. BOLAND, *Guardian ad Litem* for JANET MAUREEN GRACE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENT JOHN P. BOLAND, *GUARDIAN AD LITEM* FOR JANET MAUREEN GRACE, AN INCOMPETENT PERSON, IN OPPOSITION

JOHN P. BOLAND, *Guardian ad Litem*
for Janet Maureen Grace,
an Incompetent Person,
Respondent *Pro Se*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 853

MICHAEL P. GRACE, II, individually and as a Trustee under the Last Will and Testament of JANET GRACE,

Petitioner,

against

DEEPDALE, INC., REAL PROPERTY OWNERS, INC., GRACE NATIONAL BANK OF NEW YORK, GRACE PROPERTIES, INC., in Liquidation and ALBERT JORGENSEN, COMMITTEE OF JANET MAUREEN GRACE, by Grace National Bank of New York, and Michael P. Grace, II, its members, CHARLES MACDONALD GRACE, individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, JOSEPH P. GRACE, JR., individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, and JOHN P. BOLAND, *Guardian ad Litem* for JANET MAUREEN GRACE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENT JOHN P. BOLAND, *GUARDIAN AD LITEM* FOR JANET MAUREEN GRACE, AN INCOMPETENT PERSON, IN OPPOSITION

The respondent, John P. Boland, *Guardian ad Litem* for Janet Maureen Grace, prays for an order denying petitioner's application for a writ of certiorari to review a

final judgment in the above matter in the Supreme Court, State of New York, for the County of Nassau, dated November 4, 1959, affirmed by the Appellate Division, Second Department of the Supreme Court of the State of New York, as to which leave to appeal was denied by both the Appellate Division and the Court of Appeals of the State of New York. An appeal as of right was dismissed by the Court of Appeals of the State of New York, "upon the ground that no substantial constitutional question is directly involved".

Opinions Below

The opinion of the trial court is set forth in Volume II of the Record at pages 1599 to 1625 and is reported in 9 Misc. 2d 538. The affirmance of the judgment below by the Appellate Division was without opinion, and the Court of Appeals' denial of leave to appeal as well as its dismissal of petitioner's appeal as of right were also without opinion.

Statement

The trial of this action was commenced on October 8, 1957. On the morning of October 15, after five days of trial, Charles Haydon, Esq., petitioner's counsel, informed the Court that he and associate counsel had had a "very disagreeable conference" with the petitioner the preceding evening and that petitioner had made such charges against counsel that neither he (Haydon) nor his associate firm could in good conscience continue to represent the petitioner (R. 669). Mr. Haydon asked for leave to withdraw as counsel for the petitioner (R. 669). The trial judge reserved decision on Mr. Haydon's application to withdraw and granted petitioner (who was present in court) a six-day adjournment with the advice, "that if other counsel were prepared to go forward on the adjourned date Mr. Haydon would be relieved but otherwise he would be re-

quired to go forward with the case and continue as counsel for petitioner" (R. 685).

On October 21, the adjourned date, petitioner appeared with other counsel and requested a further adjournment of two weeks (R. 689). After argument, the Court denied the request and directed that the trial go forward (R. 697). The Court then instructed Mr. Haydon that he was not relieved as counsel for petitioner but would stay in the case until such time as new counsel might take over petitioner's representation in full (R. 697). After a short recess and conference by petitioner and his attorneys, new counsel declined to appear and pursuant to the Court's direction, the trial was continued with Mr. Haydon as petitioner's counsel (R. 706). Mr. Haydon continued to present the petitioner's case thoroughly and well until the morning of October 27 when the Court and counsel for some of the respondents were handed identical telegrams from the petitioner (R. 980) which began:

> "Bernstein & O'Dwyer through Charles Haydon have fought this case with unquestionable zeal and skill".

The telegrams concluded in part:

> "After a deposition from me, I authorize the proper authorities whoever they may be to discontinue this trial * * *". (R. 2027)

Thereafter, the petitioner in open court personally requested Mr. Haydon to put in no further evidence but to rest petitioner's case (R. 987). Mr. Haydon acceded to the request, and petitioner's case was rested (R. 987). Mr. Haydon, as the trial court observed, remained throughout the balance of the trial ready to examine witnesses and to proceed except for the fact that the petitioner had requested him not to do so (R. 1622).

Thereafter, at the close of the case, the Trial Court dismissed petitioner's case and granted judgment in favor of the respondents (R. 1623).

Question

The question presented is not as stated in the petition. Rather it is:

> In a trial of a civil action in a State Court, is it a denial of due process under the Fourteenth Amendment for the Trial Court, after having already granted a party to the action a delay of six (6) days for the purpose of obtaining new counsel, to refuse an additional adjournment of two weeks for new counsel to prepare?

Argument

Petitioner was not denied counsel or the right to counsel. At his request, he was granted six (6) days delay in the middle of trial to obtain new counsel with the emphatic admonition that no further delay would be permitted. The Trial Court adhered to its ruling.

A hearing or an opportunity to be heard before judgment with full opportunity to present all the evidence and arguments which the party deems important is all that can be adjudged vital under the guarantee of due process of law under the Fourteenth Amendment.

Petitioner has had his day in Court. He is entitled to nothing more.

CONCLUSION

The petition should be denied.

Respectfully submitted,

JOHN P. BOLAND, *Guardian ad Litem*
for Janet Maureen Grace,
an Incompetent Person,
Respondent *Pro Se.*